


REFERENCES



THE FEDERAL ACQUISITION REGULATION (FAR)
The Department of Defense Supplement to the FAR (DFARS)
The Department of the Army Supplement to the FAR (AFARS)
The Army Contracting Command Acquisition Instruction (ACA AI)
The Army Contracting Command COR Handbook



ACQUISITION PROCESS

ACQUISITION PLANNING

(Requiring Activity/Functional Organization)

Requirement .Determination
 .Acquisition Plan

Requirement . Statement of Work
 .Quality Assurance Surveillance Plan(QASP)
 . Independent Government Estimate (IGE)

Procurement Request

Other Documents

Page 10

ACQUISITION PROCESS

CONTRACTING

(Contracting Office)

- Advertisement (FAR Part 5 – Publicizing Contract Actions)**
 - FEDBIZOPPS:** Synopsis thru the Governmentwide Point of Entry (Over \$25,000)
 - Public Notices:** (> \$10,000 but < \$25,000)
 - Exceptions:** FAR 5.202-Exceptions, Oral quotes or FACNET Sol.

ACQUISITION PROCESS

CONTRACTING

(Contracting Office)

- Solicitation**
 - Prepared based upon KO's interpretation of RA's requirement package
 - Defines the Government's needs
 - Contains everything the bidder/offeror needs to know to be able to provide prices to the Government
 - Awarded contract will "mirror" solicitation

Pages 11-12

ACQUISITION PROCESS

CONTRACTING

(Contracting Office)

- Evaluation of Bids/Offeres IAW**
 - Solicitation terms;
 - Laws,
 - Regulations; and
 - Procedures appropriate to the type of contract and method of acquisition

Pages 11-12

ACQUISITION PROCESS

CONTRACTING (Contracting Office)

Pages 11-12

- Basic Acquisition Methods
 - Simplified Acquisition Procedure (SAP)
 - Blanket Purchase Agreements (BPAs)
 - Impact Credit Card Users
- Sealed Bidding;
- Contracting by Negotiations

ACQUISITION PROCESS

CONTRACTING (Contracting Office)

Pages 11-12

- Selection of Source
 - Determination of Responsibility
 - Past Performance
 - Financial Capabilities
- Award

ACQUISITION PROCESS

CONTRACT ADMINISTRATION (Administrative Contracting Office)

Page 13

- Assign or Retain Administration
 - Determination made by KO
 - May be another Agency or Another KO
 - Administrative Contracting Officer (ACO)
- Why Assign Administration
 - Closer to performance location
 - Need for specialized administration team

ACQUISITION PROCESS

CONTRACT ADMINISTRATION (Administrative Contracting Office)

Page 13

- Compliance with Delivery/Performance
 - COR is responsible for ensuring compliance;
 - COR's tool is the Quality Assurance Surveillance Plan which may be;
 - Contract specific/driven
 - Mission driven
 - Based on available resources; or
 - Performance driven

ACQUISITION PROCESS

CONTRACT ADMINISTRATION (Administrative Contracting Office)

Page 13

- Contract Modification
 - Used to change some term or condition of the contract the contract
 - Must be requested by COR
 - Must be within the scope of the contract
- COR MAY NOT ALTER THE CONTRACT IN ANY WAY!

ACQUISITION PROCESS

CONTRACT ADMINISTRATION (Administrative Contracting Office)

Page 13

- Completion
 - Government (COR) accepts
- Payment
 - Final invoice – May be certified by COR
- Closeout

Official Contract
LANGUAGE & LAW

The English Language
prevails in U.S. Government
contracts even if courtesy
translations are provided.



U.S. Law prevails in U.S.
Government contracts.

LEARNING OBJECTIVES



Page 14-15

1. Source of COR's authority
2. How it's delegated
3. Who has contractual authority?
4. What are the limits on the COR related to acquisition authority?



ACQUISITION AUTHORITY DELEGATION

Constitution
President
Sec of Defense
Sec of Army
HCA
PARC
Contracting Officer

* No Acquisition Authority
Assists the KO & COR



* QAR

Contracting Officers may:

1. Designate **Contracting Officer's Representatives (COR)s** and designate **Alternate CORs**; **OR**
2. Designate **more than one COR** for a single contract when necessary to ensure continuity of operations; **OR**
3. When the contract schedule provides for performance at more than 1 work site; & **one COR cannot handle all work sites**;

Contracting Officers may: (continued)

4. Appointment letters shall clearly identify all worksites for which each **COR** is responsible; **OR**
5. State that an alternate is authorized to act in the absence of the primary **COR**.

CAUTION

A COR will **NOT** be designated authority to make any contract Obligations or Changes affecting

**PRICE
QUALITY
QUANTITY
DELIVERIES
or
PERFORMANCE**

Require bi-lateral agreements and *Are not covered by the Changes Clause.*

COR MEMORANDUM OF DESIGNATION

As a minimum it will include:

1. Names of COR & Contracting Officer.
2. Contract Number.
3. Areas of Authority/Responsibility.
4. Specific Limitations on Authority.
5. Ethics and Standards of Conduct.
6. Notice of any alternates/assistants.
7. Requirement to acknowledge/accept.

LEARNING OBJECTIVES

Chapter 3, Sections A, B, C, & D

Pages 16 - 27

Overview Chapter 3, Contract Agency Law

1. Chapter 3, Section A

- Define a contract
- Identify & Understand the six Elements of a contract

LEARNING OBJECTIVES

Chapter 3, Sections A, B, C, & D

Pages 17 - 19

2. Chapter 3, Section B – Agent, Agency, Independent Contractor & Personal Services

- Agent and Agency defined.
- Understand the Authority/Classification of the Agent
- Understand what is meant by an Independent Contractor
- Understand the difference between Personal and Non-personal Services

LEARNING OBJECTIVES

Chapter 3, Sections A, B, C, & D

Pages 21 - 22

3. Chapter 3, Section C – Types of Authority

- Understand the various types of authority,
- Understand which are real authorities and which are not.

LEARNING OBJECTIVES

Chapter 3, Sections A, B, C, & D

Pages 24 - 27

• Chapter 3, Section D – Unauthorized Commitments, Constructive Changes & Ratifications

- Understand how Unauthorized Commitments occur.
- Understand what Ratification is and the ratification process.
- Understand how Constructive Changes occur and how they differ from unauthorized commitments.
- Understand the Constructive Change Doctrine

CONTRACT

Page 17

A mutually binding legal relationship

- between two or more parties,
- enforceable by law,
- obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them (CONSIDERATION).

ESSENTIAL ELEMENTS OF A CONTRACT OR MODIFICATION

Page 17-19

1. OFFER

2. ACCEPTANCE

3. MUTUAL CONSIDERATION

4. LEGAL/POSSIBLE OBJECTIVE

5. COMPETENT PARTIES

6. CLEAR TERMS/CONDITIONS

All must be present to have a legally binding contract.

OFFER

Page 17-18

Means: a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract.

OFFER

Page 18

- Responses to Invitation for Bids (IFBs –sealed bidding) are offers called “bids” or “sealed bids”;
- Responses to Request for Proposals (RFPs - negotiation) are offers called proposals; and
- Responses to Request for Quotations (RFQs – simplified acquisition) are called “quotations” not offers.

OFFER

Page 18

To be valid it must be:

- Intended as an offer
- Complete in essential terms
- Communicated to the offeree, as intended
- Clear and unambiguous

ACCEPTANCE

Page 18

Is an expression of consent to the proposed offer.

It must be:

- a. CLEAR - *No Misunderstanding. One interpretation;*
- b. TIMELY - *Must occur before the offer is revoked; and*
- c. Must be in the SAME TERMS as offer (to avoid being a counter offer) (Offer/Counteroffer is not used in Sealed Bidding.)

CONSIDERATION

Page 18

The price bargained & paid for a promise.
(Something of value changes hands.)

It may consist of:

- a. an act,
- b. forbearance of an act,
- c. or a return promise.

To be valid consideration must be legally sufficient and “MUTUAL”

COMPETENCY of the PARTIES

Page 18

- All parties to a contract must have legal capacity to enter into a contract.
2. Incompetent Parties Rule:
- INFANCY – Under Majority
 - INSANITY
 - INTOXICATION

LEGAL & POSSIBLE

Page 19

- 1. If a contract objective is not Legal and Possible, it is not enforceable.
- 2. When a contract objective is impossible to accomplish, the law will not uphold a default termination.
- 3. Govt. cannot legally contract for anything contrary to law.

CLARITY of TERMS

Page 19

- 1. Clear enough for the courts to conclude that a contract agreement was intended.
- 2. Uncertainty concerning the OFFER, ACCEPTANCE & CONSIDERATION may render an agreement unenforceable.

An AGENT

Page 20

Is a person authorized by another,
the Principal
to act on behalf of the
the Principal
and subject to the control of
the Principal

GENERAL AGENT

Page 20

- *Authorized to conduct a series of transactions for the principal,*
- *Blanket Authority*
- *Can do practically anything the principal can do.*

SPECIAL AGENT

Page 20

- o Authorized Only to Conduct a Single Type of Action Not Involving Continuity of Service
- o Limited Authority to Act
- o In the U.S. Government
GENERAL or UNLIMITED AUTHORITY
Does not exist !

AGENCY

Page 20

Is the relationship existing between two parties, the Principal and the Agent, and is created when the principal authorizes the agent to act for them with third parties *and the agent agrees.*

AGENCY

Page 20

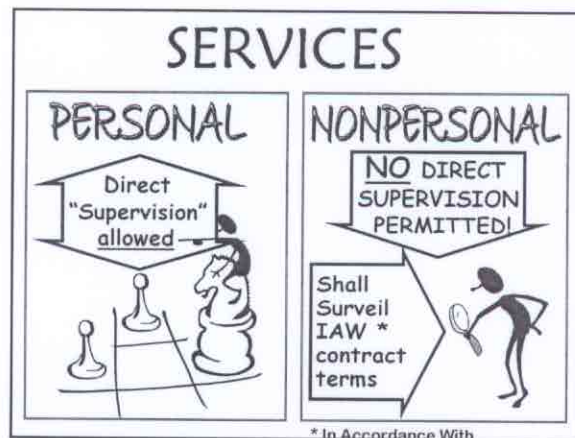
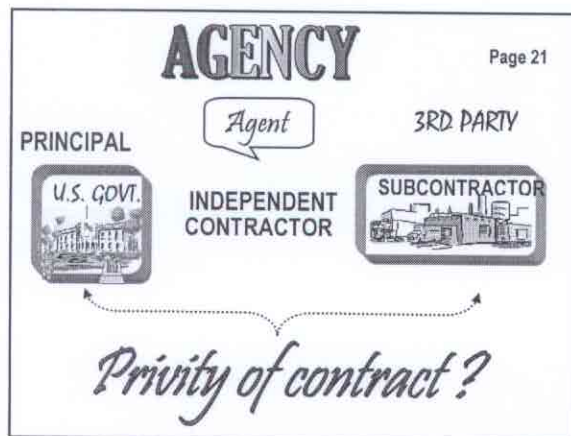
PRINCIPAL	AGENT	3RD PARTY
US GOVERNMENT	KO/ACO/ COR	INDEPENDENT CONTRACTOR

Privity of contract ?

INDEPENDENT CONTRACTOR

Page 21

- is the 3rd party in Gov't contracting - referred to as the "prime" contractor.
- exercises independent resources and judgment.
- uses own methods to perform work



Page 21

Personal Services contracts shall not be awarded unless specifically authorized by statute. That statute is 5 U.S.C. 3109.

ACTUAL AUTHORITY

Page 22

1. Express(ed) Authority

Generally an appointing document from the principal to an AGENT expressly defining the range of authority passed to the AGENT.

ACTUAL AUTHORITY

Page 22

2. Implied (Incidental) Authority

Not expressly given to an agent, yet necessary to accomplish the tasks assigned.

Limits of this incidental authority is defined as "usual", "customary" and "necessary".

AUTHORITY BY OPERATION OF LAW

Page 22

Created by some "Rule of Common Law" or, as decided by the courts in



"THE DOCTRINE of QUANTUM MERIT"

The courts will not allow one party to profit at the expense of another.

APPARENT AUTHORITY

Page 23

- o is not a Real or Actual Authority
- o is created when the principal acts (or fails to act) in a manner that allows another to appear to be their agent. This is called the "Doctrine of Apparent Authority".

Liability of Principal

Page 23

-Doctrine of Apparent Authority does not apply against the U.S. Government

-Doctrine of Ratification – Government may agree to be bound by unauthorized acts of it's agents.

Unauthorized Commitments (UC)

Page 24

- Agent had no authority
- Mostly result from apparent authority.
- Have no relationship to a contract.

Ratification

Page 24

1. Adoption of an *Unauthorized Act*:
 - a. Principal accepts liability of act.
 - b. Retroactive to occurrence date.
2. When it is in the best interest of the Gov't., an *authorized commitment* **May be ratified, if it's legal, but it's not automatic.**

Limitation on Ratifications

Page 25

At the time of occurrence:

- There must have been a legal mission or functional Authority;
- Funds had to have been available; AND
- The Government had to have received a benefit

CONSTRUCTIVE CHANGES

Page 25

- are unauthorized actions (unauthorized commitments);
- generally resulting from apparent authority; BUT
- arise out of or are related to contracts.
- are generally settled under the "Disputes" clause of the contract.
- are a major cause of contractor claims & mission impairment.

CONSTRUCTIVE CHANGE DOCTRINE

Page 26

- was created by the ASBCA to;
- establish policy;
- avoid legal cases; and
- avoid the perceived harshness of the "doctrine of apparent authority rule"

NOT A CONSTRUCTIVE CHANGE

Page 26

- Suggestions;
- Voluntary Changes by the Contractor;
- Although not constructive changes, suggestions and voluntary actions are difficult to isolate and generally should be avoided.

EFFORTS TO AVOID CONSTRUCTIVE CHANGES

Page 26

1. Special clauses in the contract requiring the Contractor to:
 - take directions from specific personnel; and
 - report unauthorized changes.
2. Providing a Copy of the COR Letter of Designation.
3. Discussing the authority chain in the Post Award Conference.

ETHICS

Page 28

INTRODUCTION

- Government and Contractor personnel must follow exemplary standards of conduct
- Numerous statutory and regulatory provisions prescribing stringent penalties for non-compliance exist.
- Government performs reviews of the Contractor's ethics program.

ETHICS

Page 28-29

GENERAL GUIDANCE AND POLICY

- Improper Business Practices may result in:
 - Increased costs to the Government; and
 - Safety hazards for Government personnel.
- Fraud Counsel conducts reviews of Contractor:
 - at request of a customer or other Government official;
 - as part of a planned Performance Assessment Review; and
 - as a risk assessment to determine if contractor's ethics program is adequate

Page 29 (paraphrased)

What do you do if you suspect improper business practices or become aware of a criminal investigation?

• **REPORT IT TO THE CONTRACTING OFFICER**

- Any knowledge of a criminal investigation shall be treated as sensitive and shared with other Government employees on a "need to know" basis.
- Investigations shall NOT be shared with Contractor personnel

Page 29

CORS SHALL:

- Cooperate with investigators and legal counsel;
- Track significant costs associated with supporting the investigation; and
- Refer all requests for information from non-government sources to the Fraud counsel (thru the contracting officer); and
- Perform normal contract administration duties without interfering with investigation

Page 30

IMPROPER INFLUENCE ON GOVERNMENT DECISIONS

- Bribery
- Gratuities

Decisions must be Objective in fact and appearance.

BRIBERY

Page 30

- *IS A CRIMINAL OFFENSE!!!!*

• *Requires that Something of Value be given, offered, promised, solicited, received or agreed, with the "intent to corrupt"*

GRATUITIES

- o It is a crime to *offer, solicit, receive or agree to a gratuity because of an official act.*
- o To be a gratuity, it must be presented knowingly & purposefully.
- o *Sec 18 USC 201 prescribes penalties.*

• General Prohibitions

• Outside Employment

• Executive Order 11222 – Section 201: Avoid actions that might result in or create the appearance of:

1. Using public office for private gain;
2. Giving preferential treatment to any organization or person;
3. Impeding Govt. efficiency or economy;
4. Losing complete independence or impartiality of action;
5. Making Govt. decisions outside official channels;
6. Adversely affecting public confidence in Govt. integrity.

Executive Order 11222 – Section 203:

No Direct or Indirect financial interests that conflict substantially with responsibilities and duties as Government employees.

SECTION 205

Executive Order 11222 – Section 205

Employees:

Shall Not Directly or Indirectly Use

OFFICIAL INFORMATION Not Made Available to the General Public, for Furthering Private Interest.

HONESTY & DISCLOSURE OF FACTS

Penalties on contractors & others who do not comply with the minimum standards of disclosure & honesty, to include:

False Claims
False Statements
Conspiracy
Noncompetitive Practices
Collusive Bidding

PRODUCT SUBSTITUTION

Definition: Occurs when a contractor provides or attempts to provide nonconforming goods or services while billing for conforming goods or services. (Gov't must prove "intent").

Product substitution is not Brand Name or Equal or any other approved substitute

Results of Product Substitution

1. Government doesn't receive that for which it is paying.
2. Mission degradation or failure.
3. Increases Life Cycle Costs.
4. Weakens the reliability of the supply system.
5. Harms integrity of the competitive acquisition system.

PRODUCT SUBSTITUTION INDICATORS

- Falsification of test results;
- Delivery of services at a lesser level than that called for in the contract; i.e.: less work, lower levels of skills/technical knowledge;
- Delivery of reconditioned items when new items are required;
- (See textbook, page 34, paragraph 8 for additional indicators)

CHAPTER 6, DESCRIBING THE REQUIREMENT LEARNING OBJECTIVES

- Understand the rationale behind Advance Acquisition Planning;
- Recognize the appropriate writing techniques, key words and phrases and writing style;
- Be able to explain the Rule of Ambiguity;
- Identify each type of Work Statement;

CHAPTER 6, DESCRIBING THE REQUIREMENT

The Work Statement:

- is the heart of the contract;
- defines the needs of the Government in a contract situation;
- states the intent of the contract in clear and concise terms.

ADVANCE ACQUISITION PLANNING

- FAR 7.103 – POLICY
- Agencies shall perform acquisition *planning and conduct market research to promote and provide for*
 - *acquisition of commercial items; or*
 - *Full and open competition*

ADVANCE ACQUISITION PLANNING

- Integrate efforts of personnel responsible for significant aspects of the acquisition.
- The purpose is to ensure the Gov't meets its needs in the most effective, economical, and timely manner.
- The planning should consider developing the QASP at the same time as the PWS is Developed.

CHAPTER 6, SECTION A – OVERVIEW AND IMPACT OF STATEMENTS OF WORK

Work Statements must convey:

- WHAT
- WHEN
- WHERE
- QUANTITY
- QUALITY

STATEMENT OF WORK ELEMENTS

SCOPE:

BACKGROUND;

OBJECTIVE;

CONTRACTOR'S TASKS; and

CONTRACT END ITEMS;

WORK STATEMENTS

Page 38

GENERAL POLICY & AS REQUIRED BY LAW (CICA)

1. Agencies **SHALL** specify needs in a manner to PROMOTE FULL & OPEN COMPETITION.
2. AVOID RESTRICTIVE PROVISIONS/CONDITIONS that limit acceptable offers Unless Necessary TO SATISFY MINIMUM AGENCY NEEDS/MISSION, and are AUTHORIZED BY LAW.
3. Agencies shall require descriptions in terms of PERFORMANCE REQUIRED or FUNCTIONS TO BE PERFORMED (whenever possible).

RELEVANT LAWS/REGULATIONS

Page 39

1. Metric Conversion Act of 1975
...Requires each agency use the metric system of measurements in its acquisitions
2. Resource Conservation and Recovery Act of 1976
...Establishes policy for procurement of products Containing recovered materials
...Requiring activities shall consider requirements Set forth in FAR Part 23, Environment, Energy, and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

WRITING TECHNIQUES, STYLE, KEY WORDS AND PHRASES

Page 39-41

1. Why write well?
...Written records, reports, letter to contractor, and other Government personnel, etc.
...Once contract is awarded the statement of work becomes a legal, binding document.
...Different interpretations of the statement of work can cause disagreements, poor relationships, performance delays, and excess costs to the Government
...Government has to interpret the technical portion of the contract to the contractor.

WRITING TECHNIQUES, STYLE, KEY WORDS AND PHRASES

Page 39-41

2. Style of writing
...Is the writers method of assembling ideas into words.
...should be calm and subdued, free of emotion or emotion evoking statements.
...should be un-distracting, allowing the reader to concentrate on the facts.
3. Key Words and Phrases
...Use **SHALL** instead of Will in work statements
...Avoid use of "choice" words
...Keep pronouns to a minimum

PRIMARY RULES OF INTERPRETATIONS

Page 41

- a. Work Statement should be as specific as possible because:
...the Contracting Officer will determine the type of contract and method of soliciting prices;
...it will allow the contractor to assess all the risks involved in performing the contract;
- b. Words or phrases will be interpreted as is most commonly used.
- c. Work statement **SHALL** define those words that are not commonly used or have specific meanings.

RULE OF AMBIGUITY

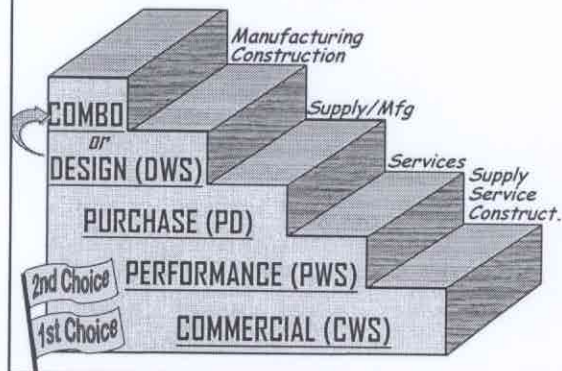
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1. **AMBIGUITY** – when more than one interpretation can be derived from a word or phrase.
 - Most weighted part of the rule is that ambiguities are decided against the drafter.
 - Second part of the rule is the **PATENT AMBIGUITY RULE**. If an ambiguity is obvious or apparent contractors are OBLIGATED TO SEEK CLARIFICATION Before Bid Opening! Failure to do so may result in a Decision against the contractor!

REMEMBER!!!!

- Readers interpret/define words & phrases based on their own experiences/needs.
- Contractors may be able to use the interpretation most favorable to them.
- PWS must be written to be interpreted the same way by contractor & the Government.

TYPES OF REQUIREMENT DESCRIPTIONS



DESIGN WORK STATEMENT

Page 43

- Used primarily for manufacturing or construction
- Provides Precise statements on:
 - How the work is to be performed;
 - Materials to be used;
 - Work Methods; and
 - Work Environment
- Contractor follows detailed steps outlined by the Gov't.
- Gov't must insure design will produce desired results.

DESIGN WORK STATEMENT

Page 43

- There is an IMPLIED WARRANTY that if the contractor follows the design, performance will be satisfactory.
- RISK is on the GOVERNMENT! The Gov't has the total risk of incorrect statements & anything not stated.

PERFORMANCE WORK STATEMENT

Page 44

State: WHAT shall be done not HOW
Describes: Output/Functions/Result.

1. Contractor responsible for results not methods.
2. Contractor tells Government how objectives will be met.
3. Gives contractor **Flexibility**

PERFORMANCE WORK STATEMENT

Page 44

1. Descriptive/specific enough to Promote Competition & Protect the Gov't's Interest.
2. Contractor bears RISKS.
3. Contractor required to meet all contract requirements for completed performance.
4. HOW it's done is not relevant!

PURCHASE DESCRIPTIONS

- **GENERIC** description of noncommercial end items.
- **NONCOMMERCIAL ITEMS:** Generally inspected during manufacturing process by the cognizant Contract Administration Organization (CAO)

COMMERCIAL DESCRIPTIONS

Pages 46-47

- Items and services available in the Commercial Marketplace.
- 2. Items & services evolved from commercial items & services through technological & performance delivery advances, that will be commercially available by delivery or performance time.
- 3. Permits minor modifications / Alterations
- 4. Nondevelopmental items/services developed at private expense and sold in substantial quantities, On a competitive basis, to multiple state and local Governments.

COMMERCIAL DESCRIPTIONS

Pages 47

- **STRATEGY AND INITIATIVES:**
- **Army Policy:**
 - is to use commercial products, practices, and Processes to the maximum extent possible.
- Strategy reduces unnecessary overhead and Consequently reduces costs.
- Relies on the commercial market place as our Industrial base.
 - Use Commercial Item Description
 - Use Performance Specifications
 - Use non-government (commercial) standards
 - Avoid use of Military documents

CHAPTER 7, CONTRACT TYPE / KIND

- Contracting Officer determines the type of contract.
- A wide selection of Contract types is available to the Government.
- There are two broad categories of contract types:
 - Fixed-Price
 - Cost-Reimbursement
- There are two method of soliciting prices:
 - Sealed Bidding
 - Negotiation

CHAPTER 7, CONTRACT TYPE / KIND

Firm-Fixed Price Contracts

- Price remains firm
- Profit is included in the price
- Contractor is required to perform at the contract price
- Risk is on the Contractor

CHAPTER 7, CONTRACT TYPE / KIND

Other types of Firm-Fixed Price Contracts

- FP with Economic Price Adjustment (FPEPA)
- FFP Level of Effort (FFPLOE)
- Fixed-Price Incentive (FPI) Contracts

Indefinite Delivery Indefinite Quantity (IDIQ) Contracts

- Indefinite-Quantity
- Definite-Quantity
- Requirements

CHAPTER 7, CONTRACT TYPE / KIND

Cost-Reimbursement Contracts

- Contractor is paid all costs that are ALLOWABLE, ALLOCABLE, and REASONABLE.
- Shifts the risk to the Government.
- Price varies with cost experience.
- Contractor is paid a fee not profit.
- Suitable for use ONLY when uncertainties regarding contract performance do not permit costs to be estimated with sufficient accuracy to use a FFP contract.

CHAPTER 7, CONTRACT TYPE / KIND

Other types of Cost-Reimbursement Contracts

- Cost Contracts
- Cost-Sharing Contracts (CS)
- Cost-Plus-Fixed-Fee Contracts (CPFF)
- Cost-Plus-Incentive-Fee Contracts (CPIF)
- Cost-Plus-Award-Fee Contracts (CPAF)

CHAPTER 7, CONTRACT TYPE / KIND

Time and Materials/Labor Hours (TM/LH)

Used when it is not possible:

- to accurately estimate the extent or duration of the work
- To anticipate costs with a reasonable degree of confidence

CHAPTER 7, CONTRACT TYPE / KIND

Time and Materials/Labor Hours (TM/LH)

Acquire supplies/services based upon:

- Direct labor hours
- Materials at costs

Does not provide a positive profit incentive to the contractor for cost control or labor efficiency

THREE KINDS OF CONTRACTS

1. SERVICE

Time & effort to perform an identifiable task.

2. CONSTRUCTION

Construction, alteration & repair of real property.

3. SUPPLY

Identifiable end item.

CHAPTER 8 - GOVERNMENT FURNISHED PROPERTY/MATERIAL (GFP/GFM)

- Government Furnished Property (GFP)
- Government Furnished Material (GFM)
- Government Policy Regarding GFP & GFM
- Responsibilities of the Contracting Parties

CHAPTER 8 - GOVERNMENT FURNISHED PROPERTY (GFP) / MATERIAL(GFM)

•GOVERNMENT FURNISHED:

- All equipment, goods, land, leased or owned by the Government

•CONTRACTOR ACQUIRED:

- All equipment, goods, and land purchased by the contractor on behalf of the Government under the terms of the contract.

CHAPTER 8 - GOVERNMENT FURNISHED PROPERTY (GFP) / MATERIAL(GFM)

POLICY:

- Contractors are ordinarily required to furnish all property necessary to perform government contracts; UNLESS
- It is to the advantage of the Government to provide property or material

CHAPTER 8 - GOVERNMENT FURNISHED PROPERTY (GFP) / MATERIAL(GFM)

Conditions when it may be advantageous to provide GFP/GFM

- Material not readily available on the commercial market;
- Necessary to get a standard or uniform end product;
- Cost would be less than the contractor had to pay;
- Expedite mission accomplishment; and
- Broaden the competitive base.

CHAPTER 8 - GOVERNMENT FURNISHED PROPERTY (GFP) / MATERIAL(GFM)

Examples of GFP:

•Manufacturing Equipment, Generators, vehicles, office machines, furniture, computers, software, hydraulic lifts, test equipment, weapons systems, facilities

Examples of GFM:

•Components of tanks, weapons systems or helicopters, paint, paper, supplies, cleaning supplies, etc.

CHAPTER 8 - GOVERNMENT FURNISHED PROPERTY (GFP) / MATERIAL(GFM)

RESPONSIBILITY for GFP/GFM:

•Contracting Officer

- Has overall contractual responsibility.
- Ensures list of GFP/GFM is included in solicitation and contract
- Ensures procedure for transferring GFP/GFM to the contractor is in the contract.
- Appoints Property Administrator or delegate PA duties to the COR

CHAPTER 8 - GOVERNMENT FURNISHED PROPERTY (GFP) / MATERIAL(GFM)

RESPONSIBILITY for GFP/GFM:

•Contractor

- Accountable and responsible for security and maintenance of GFP used by the primary and subcontractor;
- Develops and maintains a Property Control System;
- Maintains official Property Control Records
- Disposes of GFP as directed by the KO.

CHAPTER 8 - GOVERNMENT FURNISHED PROPERTY (GFP) / MATERIAL(GFM)

RESPONSIBILITY for GFP/GFM:

•Contracting Officer's Representative (COR)

- Reviews Contractor's property control system;
- Ensures property control system complies with FAR Part 45.5 and Government Property clauses; and
- Notifies contractor in writing if property control system is not in compliance.

CONTRACT ADMINISTRATION:

Page 65

- involves those activities performed by government officials after a contract has been awarded to determine how well the government and the contractor are performing to meet the requirements of the contract.
- encompasses all dealings between the government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment made, and any disputes resolved.
- constitutes that primary part of the procurement process that assure the government gets that for which it pays.

CONTRACT ADMINISTRATION:

Page 65

- Focus is on obtaining supplies, services and construction of requisite quality, on time, and within budget;
- Extent varies from contract to contract and can range from the minimum acceptance of a delivery and payment to the contractor;
- Starts with developing clear, concise, performance based statements of work and developing a contract administration plan or QASP; and
- Good Contract Administration assures end users are satisfied with the end result.

CONTRACT ADMINISTRATION WEAKNESSES:

Page 65

1. More time allocated to awarding contracts than administering them may lead to:
 - Poor contractor performance
 - Cost overruns;
 - Delays in receiving goods and services
2. Improperly trained officials performing contract oversight; and
3. Unclear statements of work that hinder contractor performance.

ORGANIZATION AND RESPONSIBILITIES Cooperation and Leadership

Page 66

(1) Administration of Installation Level Service Contracts

- Need to reduce operational costs increases use of contractors;
- Degree of savings dependent on motivation and managerial capabilities of contractor and Government;
- Resolve small problems before they result in litigation.

ORGANIZATION AND RESPONSIBILITIES Cooperation and Leadership

Page 66

(2) Administration is multi-discipline process. Success depends on communications and cooperation.

- Leader contract administration team is KO;
- KO determines composition of administration team and the authority of team members.
- Skill level and number of team should be commensurate with the technical complexity.

ORGANIZATION AND RESPONSIBILITIES Cooperation and Leadership

Page 66

(3) KO must actively administer the contract.

- Cannot abdicate responsibility to authorized representatives;
- Must be allowed direct access to the authorized representatives when not in same organization; and
- Successful contract administration is heavily dependent on the application of good business judgment.

ORGANIZATION AND RESPONSIBILITIES

Delegation vs Retention

- Contracting Officer determines whether or not to assign contract to Administrative Office;
- Contracting Officer exercises judgment in how much authority to delegate; and
- Delegation of authority should be kept to the minimum needed to perform adequate contract surveillance.

POST-AWARD CONFERENCE

ESSENTIAL for good contract administration.

1. Need for a post-award conference is determined by the KO;
2. Always conducted prior to the contractor beginning contract performance;
3. Is conducted by the KO (unless delegated to the ACO or COR)
4. Is held to ensure Government and Contractor have a clear and mutual understanding of all contractual requirements and obligations; and
5. Identify and resolve potential problems.

CONTRACT ADMINISTRATION TEAM

- Contracting Officer (KO, ACO, TCO)
- Contract Specialist
- Contracting Officer's Representative (COR)
- Quality Assurance Representative (QAR)
- Other Interested Parties
 - o Legal Counsel
 - o Program Manager
 - o Project Officers
 - o Safety, Security & Environmental

UNIFORM CONTRACT FORMAT

TABLE OF CONTENTS FOR SERVICES

Part I - The Schedule	Part II - Contract Clauses
A Solicitation/Contract Forms	I Contract Clauses
B Supplies/Services & Prices/Costs	Part III - List of Documents, Exhibits & Other Attachments
C Description/SOW	J List of Attachments
D Packaging & Marking	Part IV - Representations & Instructions
E Inspection & Acceptance	K Representations, Certifications and Other Statement of offerors
F Deliveries or Performance	L Instructions, Conditions, and Notices to Offerors
G Contract Administration Data	M Evaluation Factors for Award
H Special Contract Requirements	

CHAPTER 11, PERFORMING QUALITY ASSURANCE - LEARNING OBJECTIVES

Page 75

1. Understand the principles of Quality Management
2. Explain uses of the Quality Control Plan (QCP)
3. Explain uses of the Quality Assurance Surveillance Plan (QASP)
4. Understand the CORs responsibilities regarding the QCP and the QASP

PERFORMANCE SURVEILLANCE

Page 75

Performance surveillance is:

- ... a function of contract administration;
- ... used to determine contractor progress; and
- ... identify factors that may delay performance;

PERFORMANCE SURVEILLANCE

Page 75

Performance surveillance involves:

...Government review and analysis of Contractor performance plans, schedules, controls, and industrial process; and

...the contractor's actual performance under them.

REMEMBER: The contractor is responsible for timely Contract performance!!

PERFORMANCE SURVEILLANCE

Page 75

The Contracting Officer determines the extent of Performance Surveillance based upon:

- Contract requirements for reporting production progress and performance.
- Contractor's performance schedule;
- Contractor's production plan;
- Contractor's history of contract performance;
- Contractor's experience with the contract supplies or services;
- Contractor's financial capability; and
- Any supplemental written instructions from the contracting Office.

OBJECTIVE OF SURVEILLANCE:

Page 75

-- is to monitor contractor performance to ensure compliance with the terms and conditions of the contract.

Surveillance plans shall be developed to accomplish:

1. Provide a guide to effectively monitor a contractor's performance;
2. Outline the corrective procedures to be taken for deficient performance; and
3. Provide a means for the Contracting Officer to evaluate the performance of the Government CORs, QARs, and Inspectors in monitoring contractor performance.

DEFECTS AND ACCEPTANCE

Page 76

DEFINITION: PATENT DEFECTS are defects that are obvious under "normal inspection".

Defects noted at time of Delivery / Acceptance are generally rejected.

May take other actions permitted by inspection clause.

DEFECTS AND ACCEPTANCE

Page 76

DEFINITION: LATENT DEFECTS are defects that are hidden under "normal inspection".

Defects not visible at the time of delivery/performance are subject to the corrective actions defined in the inspection clause.

DEFECTS AND ACCEPTANCE

Page 77

ACCEPTANCE by a Government representative is Generally conclusive and final UNLESS one of the following conditions apply:

- (1) Latent Defect,
- (2) Fraud by Contractor,
- (3) Gross Mistakes amounting to fraud,
- (4) Any other rights the Government is entitled to under the guarantee or warranty provisions of the contract

RESPONSIBILITIES for QUALITY ASSURANCE

Page 77

COR has the responsibility to:

- Ensure compliance with the technical terms and conditions of the contract
- Ensure there is a plan in place to perform surveillance
- Ensure any assistants (QARs/Inspectors) understand and perform surveillance in accordance with the plan.

RESPONSIBILITIES for QUALITY ASSURANCE

Page 77

QARs are responsible for;

- Maintaining technical competency;
- Obtaining/maintaining proficiency in surveillance; and
- Performing surveillance in accordance with the QASP and documenting surveillance observations to the COR/KO.

RESPONSIBILITIES for QUALITY ASSURANCE

Page 77-78

QARs must be;

- Fair, impartial and consistent.

QARs best attributes are technical expertise and common sense logic.

QARs are not permitted to:

- Interpret any terms of the contract;
- Approve deliveries/performance or certify invoices; or
- Take corrective action with the contractor.

QUALITY MANAGEMENT

Page 78

- Traditional quality approach focused on conformance.
- Traditional Quality Management Systems focused on identification and control on non-conforming performance
- Traditional approach to preventing nonconforming material/construction/services suffers drawbacks such as:
 - Identification and control of defects more costly than prevention of them in the first place; and
 - Often even 100% inspection fails to identify all non-conformances.

QUALITY MANAGEMENT

Page 78

- Contractor is required to have an inspection system acceptable to the Government; however SECDEF memo dtd 29 June 1994 encourages use of commercial practices and requires contractors to be given flexibility to identify their own systems.
- Inspection (Quality) system should adhere to the 20 elements described in the original ISO-9000 series and updates.
- This type of system relies on assessment of the contractor;s own quality management process, process controls, inspection, and test.

QUALITY MANAGEMENT

Page 78

- Quality products and services should be achieved through integrated product and system development.
- Achievement requires an effective quality management process to be used in conjunction with effective business and technical practices.
- Benefits:
 - Include first time pass quality;
 - Decreased cycle time or performance time;
 - Reduction in rework, engineering changes, and inspections;
 - Improved affordability and reduced risk.

QUALITY MANAGEMENT

Page 78-79

- OVERSIGHT:
 - Contractor are responsible for the quality of their products or services.
 - Contractor's basic quality management system should be a requirement of the contract and should adhere to the twenty elements described in ISO-9000 series.
 - To hold them responsible organizations should:
 - Include quantitative and definitive quality requirement;
 - Define, measure and access essential quality requirements; and
 - Items "c" through "g", page 79

QUALITY MANAGEMENT

Page 80

- Application and Use of Commercial Quality Standards
 - Contractor's ability to satisfy the quality management system objectives should be assessed in source selection and continuously monitored after contract award.
 - The elements of ISO-9000 formulate the baseline for review and approval of a contractor quality management process.
 - Reviews of contractor quality management systems should place emphasis on management responsibility, supplier control, corrective and preventitve action and internal audit.

EFFECTIVE & EFFICIENT SURVEILLANCE

Page 81

- COR verifies contractors have processes and a quality system that meets contract quality requirements.
- COR, in coordination with Contract Administration Team and the Program Manager can:
 -Minimize the disruptive impact of surveillance efforts on contractor operations and reduce costs of surveillance
- COR, upon contractor non-conformance,; Requests, evaluates, and verifies contractor corrective actions.
- Encourages contractor to self audit, pursue proces maturity and effectiveness, waste minimization and continuous improvement.

DEFICIENCY REPORTING

Page 81-83

CORs/QARs should establish a deficiency reporting and correction system

Contractor should implement a system that identifies the root cause of defects and corrective actions

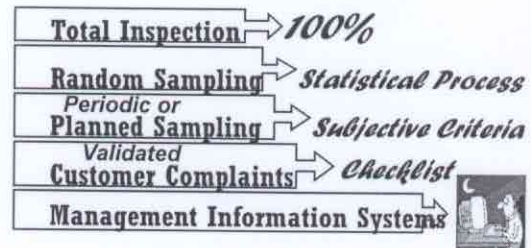
CHAPTER 11, SECTION A –INSPECTION CLAUSES

Page 83

1. Inspection clauses give the COR the authority to inspect;
2. Inspection clauses set forth the rights and obligations of the Government and the Contractor;
3. Sets forth rights & obligations of the parties if defects are found before and/or after acceptance;
4. Different clause for each type/kind of contract, and all have 3 basics:
 - Right to inspect,
 - Requirement for Quality Control Plan,
 - Remedies available if defects exist.

SURVEILLANCE METHODS

Page 88



TOTAL INSPECTION/100%

Page 88

Save for *CRITICAL* services performed *infrequently*

Health
Safety
Security

VALIDATED CUSTOMER COMPLAINTS

Page 88

1. A means of documenting certain kinds of service problems using a ***Customer Complaint Record***.
2. The way to get & document customer complaints must be carefully planned in the QASP.
3. An operating instruction must be given to each using organization.
4. **COR validates**, takes appropriate actions and documents the file.

RANDOM SAMPLING

Page 89-90

1. Is a statistically based sampling method of looking at a few outputs in a lot to determine if the entire lot is defective or non-defective, or whether to accept or reject the entire lot. Surveillance
2. Most efficient method to surveil a large quantity of non-critical tasks performed frequently.

RANDOM SAMPLING

Page 89-90

3. Most appropriate method for recurring tasks.
4. Computer Programs exist to assist in establishing sampling procedures.
5. Government evaluates only a portion of total performance.
6. Permits projection of quality of the entire lot based on the observations of a few sampled
7. Each output in the lot must have an EQUAL chance to be selected every time.
8. Is seldom effective with a large number of customers.

RANDOM SAMPLING

9. Contractor does not know which outputs will be monitored.
10. Sample must be truly random and not biased by the COR/QAR.
11. This disadvantage is that the sample selected may not focus attention on problem areas.
12. Best used with Large quantities, being performed frequently.
13. Number of service units times frequency = the lot size, or No. of service outputs in a lot.

PERIODIC INSPECTION Or PLANNED SAMPLING

- Evaluation of tasks selected on other than 100% basis;
- Predetermined plan established using subjective criteria and analysis of agency resources;
- Determination of outputs to be observed is based on subjective criteria established in the QASP.

MANAGEMENT INFORMATION SYSTEMS (MIS) Page 90

- MIS is an inspection method where reports are used to determine if the performance is defective or not.
- MIS can collect information of performance values which can be used instead of random sampling data.
- MIS usually collects data for 100% of the time for a specified period of time.
- MIS may corroborate results found in other methods of monitoring or evidence new trends and/or weaknesses.
- CAUTION: If the contractor maintains the system the data input must be checked to ensure the MIS contains reliable data (calibration of equipment)

**Q = QUALITY
A = ASSURANCE
S = SURVEILLANCE
P = PLAN**

Page 91

- Guide describing monitoring methods in detail
- Specifies how quality assurance surveillance will occur
- Provides the method to determine if the contractor meets performance standards in the PWS
- Includes a surveillance schedule
- States surveillance methods to be used
- Focus on the quality, quantity, and timeliness
- NOT on the steps required or procedures to be used

Page 91

•Development of the QASP

- Is in conjunction with the performance work statement (PWS);
- QASP and the PWS can be one document.
- Select most appropriate surveillance selected method, considering:
 - Task criticality;
 - Task lot size;
 - Surveillance period;
 - Availability of Quality Assurance Representatives (QAR); and
 - Surveillance value vs cost criticality.

**QUALITY ASSURANCE SURVEILLANCE PLAN
QASP**

Performance Quality consists of:

- (1) Conformance
- (2) Nonconformance
- (3) Partial conformance

Three reasons for Non-Conformance are:

- (1) Unwillingness to conform
- (2) Unable to conform
- (3) Contract terms are not clear

Page N/A

•Regulatory Guidance - QASP

- The Army Federal Acquisition Regulations Supplement (AFARS):
 - Surveillance plan SHALL be used.
- The Office of Federal Procurement Policy (OFPP Pamphlet #4)
 - Prescribes procedures for preparing Performance Work Statements (PWS), Chapter 3; Writing the Statement of Work.
 - Prescribes procedures for preparing QASP, Chapter 4, Surveillance Plans.
 - Prescribes actual surveillance procedures, Chapter 5, Doing Surveillance.

Page 92

**QUALITY ASSURANCE SURVEILLANCE PLAN
QASP**

- Designed to aid the COR with an EFFECTIVE and SYSTEMATIC Surveillance methodology.
- Objective is to evaluate contractor's performance.
- Contains sampling guides, checklist, tables and charts needed to document monitoring each required service listed on Performance Requirements Summary (PRS) charts.

Page 92-93

PERFORMANCE REQUIREMENTS SUMMARY (PRS)

Is a Detailed Outline, in chart form, listing Major Tasks.

CHART CONTAINS:

1. Key Required Services; (Column 1)
2. Paragraph Number of Key Service; (Column 2)
3. Expected Standards; (Column 3)
4. Acceptable Quality Level (AQL), Lot Definition, Sample Size, and Accept and Reject Numbers; (Column 4)
5. Planned Method of Surveillance; and (Column 5)
6. Value of the task of total contract price (used to take deductions if defects are not corrected or not performed. (Column 6)

STANDARD

Page 93

A Standard (Column 3 of PRS Chart) is a measure of comparison; an acceptability criterion; a yardstick.

• It is compared against contractor output to measure acceptability.

• It is composed of two parts:

- a Timeliness criterion &
- a Quality criterion.

Standard may be derived from:

- Directive regulating the service;
- Agency standards; or
- Work location standards.

AQL = ACCEPTABLE QUALITY LEVEL (Column 4)

....Degree to which Govt. will allow performance to vary from standard.

MAS = MINIMUM ACCEPTABLE STANDARD

....State either as a number of defects or a percentage of error.

MER = MAXIMUM ERROR RATE

....This recognizes that unforeseen problems may occur, but, Does not excuse contractors from the requirement to deliver the defined contract quality

Page 94

LOT is expressed in terms of: (Column 5)

1. Number of outputs generated during a given period of time or surveillance period for a specified service; or

2. A collection of service outputs; or

3. The total number of units from which a sample will be taken.

Page 94

Example of a LOT:

1. Total Number of Rooms to be cleaned from which a sample is drawn and inspected is known as the "Population"
2. Lot size or "Population" must be large enough to draw an adequate sample; and
3. The timeframe must not be too long or too short to distort performance evaluation.

METHODS OF SURVEILLANCE

(Column 5)

Primary methods are by Random Sampling or 100% Inspections. Other methods are:

- Validated Customer Complaints;
- Planned Sampling; and
- Management Information Systems (MIS): Computer Programs to monitor and collect data in a specific area of performance. Used by Managers to enhance performance and by Government to compare to PWS standards.

Page 94

QASP

Page 94-96

Derives from 3 KEY ideas:

1. Management by Exception,
2. Performance Indicator, and
3. Problem Location.

MANAGEMENT BY EXCEPTION Page 94-95

....Satisfactory performance of the output as specified in the contract normally indicates the contractor is using satisfactory quality control procedures.

....Government is concerned only when services are NOT adequately performed.

PERFORMANCE MEASUREMENT INDICATORS Page 95-96

....A performance indicator is a characteristic of a work process output that can be measured. It may measure either, or both QUANTITY & QUALITY.

....The level of service monitored is by checking the performance values in the SOW.

PERFORMANCE MEASUREMENT INDICATORS Page 95-96

...Use to measure contractor performance. .

...The performance indicator, with associated performance standard and specified quality requirement, is the measuring yardstick/gauge.

...Performance indicators should be realistic.

PERFORMANCE INDICATORS = 5 TYPES Page 96

1. Quantitative

A measure of work actually done.

2. Qualitative

Measure of How Well outputs are produced against a standard.

PERFORMANCE INDICATORS cont'd

3. Timeliness

Measure of average elapsed time to do a work unit compared to a requirement.

4. Effectiveness

Measure of mission performance.

5. Costs

An indirect measure of performance when there is no other adequate measure, or if a major managerial requirement is to limit costs.

PROBLEM LOCATION Page 96

....When performance values show the service is not adequately performed, the COR uses decision tables to locate the problems/causes.

....The tables provide a logical sequence to find a problem cause. They are a set of pointers to find a problem's source step-by-step.

DEFINITIONS USED IN CASE STUDY

1. Accept and Reject Numbers
2. Batch (Lot and Population)
3. Degree of Sampling
4. Level of Inspection
5. Sample Size Code Letter
6. Sample Size
7. Types of Sampling

DOCUMENTATION

The QASP includes guidance to document following:

1. Past Performance Information (PPI)
2. Each surveillance
3. Discrepancies & unsatisfactory performance (CDR)
4. Customer complaints
5. Interactions with contractors/CO
6. Minutes of meetings
7. Correspondence

CHAPTER 11, SECTION D USING THE SURVEILLANCE PLAN

- ☐ How to do surveillance once plan is written;
- ☐ How to build a monthly schedule;
- ☐ How to use the surveillance plan; and
- ☐ What to do when there is poor contractor performance

SURVEILLANCE PLAN SCHEDULE

(Monthly Schedule for Activities)

- ☐ COR's responsibility to develop a monthly schedule for activities based upon the QASP's requirements;
- ☐ Schedule must be completed by the last workday of the preceding month.
- ☐ Schedule will cover all areas considered essential to accurately monitor contractor performance; and
- ☐ Must cover all hours of operation.

(Monthly Schedule for Activities) continued

- ☐ Distribution of Monthly Schedule.
- ☐ Daily schedules shall include enough sheets for each day of the month.
- ☐ The number of observations to be made during the rating period shall be indicated at the bottom of the schedule.

(Monthly Schedule for Activities) continued

- ☐ To complete the inspection schedule, the sampling guide (used with Random Sampling) shall be referred to for each service being monitored.
- ☐ Random Sampling or 100% Inspection will be programmed first.
- ☐ Completed monthly schedule shall be marked FOR OFFICIAL USE ONLY
- ☐ Changes are posted as they occur.
- ☐ Actual surveillance recorded must be comparable to the monthly schedule and show an audit trail that permits tracking to any COR/QAR actions.

SAMPLING PROCEDURES

- Testing / Examination of a portion of a defined population
- Determination of the quality of sampled units
- Assessment of whether quality of sampled units is equal to the quality of the entire population
- Description of criteria used to determine which outputs will be observed.

Random sampling

- Record kept of random numbers selected and how they were associated with the outputs to be observed
- To be truly random two circumstances must exist
- Improper or inaccurate random sampling could render remedial action against the contractor unenforceable

Initiate Sampling Process

1. Compiling the Lot size
2. Then number each item in the lot consecutively
3. Use Sample Size Charts to determine how many to be sampled
4. Then select actual outputs to be observed.

INSPECTION PROCEDURES

- Inspection is the process of measuring, examining, testing, or other comparing the sample with the requirements.
- Inspection procedure of the QASP is a brief explanation of the requirements and tells the evaluator what should be checked during the inspection.
- Inspection can be accomplished by:
 - Watching actual task performance;
 - Checking an attribute of the completed task; or
 - Using management information reports.

DOCUMENTATION OF INSPECTION

- Tally Checklist
 - Record information on the samples;
 - Record the results of the observations or inspections.
- Surveillance Activity Checklist
 - Documents unsatisfactory contractor performance;
 - Contractor required to initial the documentation of unsatisfactory performance

DOCUMENTATION OF INSPECTION

- Contract Discrepancy Report (CDR)
 - Completed when unsatisfactory performance is documented;
 - Contractor required to sign the CDR.
- Surveillance Certification Letter
 - Documents inspections for previous month;
 - Must be completed no later than 5th day of the month
 - Must document any missed inspections.

ADDITIONAL SURVEILLANCE TERMS

- Reduced Surveillance
 - Based upon contractor's documented good performance;
 - Puts more risk on the Government.
- Performance Requirement
 - AQL/MAS/MER is the maximum percentage of defects allowed in the random sample.
 - AQL must be listed in MIL-STD-105/E
- Contract Deduction Formula (Fixed-Price)
 - Used with Random Sampling and/or 100% Inspection
 - Used to reduce the contract amount to reflect the reduced value of unsatisfactory contract work item.

ADDITIONAL SURVEILLANCE FORMS

- Sampling Guide
 - Used in QASP to show what information is needed to sample performance; and
 - Is required for each task listed on the performance requirements summary.
- Sampling Procedure (Para b, page 106-107)
- Inspection Tables (extracted from MIL-STD105D/E);
- Tally Checklists;
- Surveillance Activity Checklists;
- Customer Complaint Record; and
- Decision Tables.

ADDITIONAL SURVEILLANCE FORMS

- Inspection of Non-Performance Requirements Summary (PRS) Items
 - Gov't still retains the right to inspect;
 - Inspect in same manner as "Periodic" surveillance items;
 - Non-PRS items should be listed in QASP; and
 - Remember there was a reason these were not put in the PRS Chart – (Inspections costs outweigh the costs of the task)

CONTRACT DISCREPANCY REPORT

COR/QAR Document unsatisfactory contractor performance.

Documentation Shall Include:

- ☐ Description of deficiency,
- ☐ Contractor's Response on cause,
- ☐ Contractor's corrective action plan,
- ☐ Government evaluation of plan,
- ☐ Government corrective actions.

CONTRACT SURVEILLANCE REFERENCE

Defense Acquisition Deskbook (DAD)(on INTERNET)
 FAR 46.4, Quality Assurance
 DFARS 246.4, Government Contract Quality Assurance
 DFARS 246.6 & App F, Material Inspection & Rec Reports
 AFARS 46, Quality Assurance
 AFARS 46.7 Warranties

SUMMARY

1. Understand and be aware of what the contractor is obligated to do in accordance with the contract.
2. Understand the surveillance plan and follow it.
3. Know what the contractor is doing and that they are performing in compliance with the terms and conditions of the contract.
4. Take timely/appropriate corrective actions and remedies to ensure contract compliance.
5. Keep the Contracting Officer informed.
6. Document The File!

SUMMARY cont'd

7. Don't Exceed Your Authority!
8. Do not consider surveillance as an opportunity to be punitive to contractors. What we need is quality performance not penalties or termination.
9. Select the surveillance method that will provide the best assurance of contractor compliance with contract technical standards.
10. Keep the responsibility on contractors to deliver quality performance.
11. Document performance IAW Past Performance.
12. Think of contractors as partners toward mission accomplishment, yet avoid conflicts of interest.

CHAPTER 11, SECTION E - PAST PERFORMANCE INFORMATION (PPI)

Page 111

SURVEILLANCE DOCUMENTATION

- Inspections are documented and filed for:
 - Reference;
 - Audit,
 - Proof of inspection
- Documentation must contain as a minimum:
 - (See Paragraph 1.b. – page 111)
- Documentation is an integral part of final contract file:
 - Must be stored and maintained
 - COR may keep additional copy for historical data

Past Performance Information (PPI)

Page 112

•Policy: PPI is relevant contractor performance information from previous contracts used for future source selections.

•USACCE requires a Performance Assessment Report (PAR) to be completed:

- For Service and IT contracts exceeding \$1M; and
- For Operation and Maintenance contracts exceeding \$500K.

•A (PAR) must be prepared for each completed contract;

•An interim PAR must be completed annually for Option periods.

Page N/A

1. The par is initiated by the contracting office.
2. Your input into this evaluation is critical.
3. Contractor reviews PAR & may comment on it.
4. COR works with contracting to provide input. Input must be: FACTUAL, SUPPORTABLE, & WELL-WRITTEN.
5. CORs must have sufficient documentation in the file to support their evaluation (especially for negative comments.)
6. PARs may have adverse impact on contractors' future business.

Performance Assessment Reports (PAR)

Regulation requires **CORS** to prepare a **PAR** on contractors' performance every 12 months for:

1. Service & IT contracts (Over \$1 Million)
2. Repair & Maintenance Contracts (Over \$500,000)

CORS shall prepare final **PAR** after contract completion.

An interim **PAR** must be prepared for each option period.

PAR is prepared via web-based application using a standard format.

PAR is input into the DA PPI Management System (PPIMS) for use for future source selections.

RELEASE OF INFORMATION

- Secure Documents
- Source Selection Information
- Contractor Proprietary

HANDLE WITH CARE

CHAPTER 12, MODIFICATIONS LEARNING OBJECTIVES

1. Define "Modification".
2. Recognize the difference between bi-lateral and uni-lateral mod.
3. Understand what a change order is.
4. Know who does and does have the authority to issue a modification.

INTRODUCTION to MODIFICATIONS

Ability to modify contract essential

- May need modification to meet critical mission objectives.
- COR's Responsibility
 - Ensure timely implementation of modifications by the contractor; and
 - Document the effective dates, required delivery or performance periods and the date the modified performance began.

DEFINITIONS

- Modification
 - Administrative Change
 - Change Order
 - Supplemental Agreement
- Effective Date
 - Solicitation Amendment
 - Change Order
 - Administrative Change
 - Supplemental Agreement

AUTHORITY

Only the Contracting Officer, acting within the scope of their authority are empowered to execute contract modifications.

Bi-lateral Modification

- Agreed to and signed by both parties;
- Supplemental Agreement is a bilateral modification;

2. Uni-lateral Modification

- Issued solely at the discretion of the Government
- Used for:
 - Administrative
 - Change Orders (within the scope of the contract)
 - Terminations

CHANGES

Contractor's Responsibility:

• Contractor shall notify the Contracting Officer, in writing as soon as possible, when he considers the Government has made a change in the contract that has not been identified as a change.

• Government's Responsibility:

• The Government will evaluate the alleged change and confirm that it is a change, direct the contractor on how to perform and plan for funding; or countermand the alleged change; or notify the contractor that no change is

REGULATORY GUIDANCE:

•FAR Clause 52.243-7, Notification of Changes requires the Contractor to notify the Government promptly of any alleged change the contractor considers a change to the contract and specifies the responsibilities of the contractor and the Government with respect to such notification.

CHANGES CLAUSE

1. Permits the Contracting Officer to make unilateral changes, in designated areas, WITHIN THE GENERAL SCOPE OF THE CONTRACT.
2. Changes may be made "at any time" before termination of the contract.
3. Contractor must continue performance unless an exception applies such as in cost-reimbursement contract.
4. Changes clause may not be used to reject goods previously accepted.

CARDINAL CHANGE

1. No precise definition of "outside the scope of the contract".
2. Consensus is that a "cardinal change" –outside the scope of the contract – occurs when the Government effectively requires the contractor to perform duties materially different from those for which they originally bargained.
3. No definite rules on determining when a change is "Cardinal". Each case determined on it's own particular setting.

Contractor's Duty:

If "cardinal" change is ordered the contractor has no duty to follow it and may stop performance – HOWEVER –

-most contractors will continue because they know they will get an equitable adjustment; or

-because they fear the change order is valid and a default termination would be upheld for failure to perform.

A supplemental agreement outside the scope of the contract is generally considered a new procurement and must comply with the rules regarding competition.

A change beyond the scope of the contract is a breach of contract and entitles the contractor to damages.

EQUITABLE ADJUSTMENT

1. Equitable adjustment provision provides for flexibility.
 - a. Allows Gov't to order a change without the extra time and expense of awarding a new contract.
 - b. Indicates what may be adjusted and how the adjustments may occur.
 - c. Burden of proof for the equitable adjustment rests on the party trying to obtain an equitable adjustment.
2. KO primarily responsible for determining what equitable adjustment should be made.

EQUITABLE ADJUSTMENT

2. a. Contractor has 30 days to assert their claim.
- b. Contracting Officer has discretion to receive and act on any claim made prior to final payment of contract.
3. If the contractor and the Government are unable to agree on an equitable adjustment, then the disagreement shall be considered a dispute and resolved under the "Disputes clause" of the contract.

Again, Contractor has to continue to work until the Dispute is settled.

CONFLICT RESOLUTION

1. Partnering
2. Ombudsman
3. Alternate Disputes Resolution
4. Protests (Before/After Award)
5. Claims settle
6. Disputes out of
Court

Page 120

1. Traditionally resolution of disputes was by claims and litigation.
2. Disagreements arise from multitude of reasons.
3. Contractor submits claim.
4. Contracting Officer renders a Final Decision.
5. Agreements reached are reflected as modifications to the contract.
4. No agreement – Contractor has option to pursue by:
 - An appeal to Armed Services Board of Contract Appeals;
 - U.S. Claims Court; or
 - One of the Alternative Disputes Resolutions available. Contractor has to agree to ADR procedures.

PARTNERING

Page 120-121

Potential Benefit to CORs:

1. Techniques for preventing disputes;
2. Creates a partnership agreement signed by all parties;
3. Achieves improved cost, schedule and performance goals;
4. Improves relationships and communication between Government and Industry; and
5. And can transform an adversarial relationship into a professional relationship.
5. Can expect results such as more timely performance, better cost control, significant reductions in paperwork, and fewer disputes.

OMBUDSMAN

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Helps parties resolve problems on existing contracts;

• Investigates reported complaints or requests for assistance from Industry;

• Issues nonbinding reports and recommendations;

• Contributes to an increased level of sensitivity in the command for handling contractor problems.

Page N/A

ALTERNATE DISPUTES RESOLUTION (ADR) FAR 33.204 Policy

The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. Agencies are encouraged to use ADR procedures to the maximum extent practicable.

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Alternate Disputes Resolution (ADR)

Voluntary Procedures to resolve controversies without Resorting to litigation

Effective and inexpensive method

No single correct method

Army established acquisition reform-working group that meets with industry

Model ADR Agreements drafted by several agencies.

Potential for savings and reduced workload

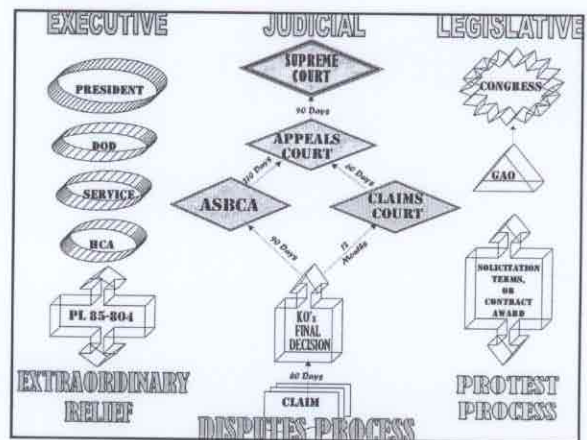
Common Features of ADR Techniques

Negotiation assistance by third party

Third party is neutral

Focus on interests

Alternatives are developed



TERMINATIONS

1. By COMPLETION
2. By OPERATION OF LAW
3. By MUTUAL AGREEMENT
4. T for CONVENIENCE
5. T for DEFAULT(LAST RESORT!)

1. By COMPLETION

Contractor completes – Government Pays

2. By OPERATION OF LAW

When Government excuses the Contractor from performing under the Contract for some reason that is beyond The control of the contractor or the Government

1. By MUTUAL AGREEMENT

2. T for CONVENIENCE

3. Termination for Convenience when in best Interest of the Government

- Technological breakthrough.
- The requirement no longer exists.
- Cessation of Hostilities.
- Item has become obsolete.
- Funding cutbacks. Troop reduction

3. T/C continued

Government is obligated to pay the Contractor for:

- All work completed.
- All preparations made.
- Allowable costs incurred to date of T/C.
- A fair and reasonable profit, BUT, no Anticipatory profit
- Settlement expenses

3. T/C continued

Contractor is obligated to:

- Stop work immediately
- Not incur additional costs
- Terminate all subcontracts and orders for supplies and negotiate settlements
- Notify KO of any legal proceeding resulting from the termination of subcontracts or orders.

4. TERMINATION FOR DEFAULT

is the Governments contractual right to completely OR partially terminate a contract because of a Contractor's actual or anticipated failure to Perform it's contractual obligations.

Problems that lead to default:

- Failure to deliver supplies/services on time
- Offering substandard supplies/services for inspection
- Failure to comply with contract provisions
- Failure to make performance – won't be completed on time.

- Do not Automatically Terminate for Default. There are certain factors we need to look at.
- Actual Default occurs first time delivery is sub-standard or delayed
- Failure to perform – either the contractor has or has not performed.
- Cure Notice
- Options in lieu of termination
- Show Cause Letter

Government's RIGHTS in a T/D

- Can repurchase the items terminated;
- Not limited to sealed bidding or negotiation; and
- Gov't can charge the contractor with actual or liquidated damages.

Government's OBLIGATIONS to the Contractor

- Must repurchase items terminated timely;
- Must be same or similar items;
- Must minimize the damages to the contractor;

- Gov't will allow defaulted contractor to compete for Repurchase.
- Role of COR in T/D Action
 - Keep the Contracting Officer informed
 - Ensure COR records are clear and accurate
 - May be called upon to appear in Court

DISPUTE:

- Contractor may dispute a T/D action
- Courts may require contract to be reinstated
- Courts may order T/D be converted to T/C

SUMMARY

1. Understand and be aware of what the contractor is obligated to do in accordance with the contract.
2. Understand the surveillance plan and follow it.
3. Know what the contractor is doing and that they are performing in compliance with the terms and conditions of the contract.
4. Take timely/appropriate corrective actions and remedies to ensure contract compliance.
5. Keep the Contracting Officer informed.
6. Document The File!

SUMMARY cont'd

7. Don't Exceed Your Authority!
8. Do not consider surveillance as an opportunity to be punitive to contractors. What we need is quality performance not penalties or termination.
9. Select the surveillance method that will provide the best assurance of contractor compliance with contract technical standards.
10. Keep the responsibility on contractors to deliver quality performance.
11. Document performance IAW Past Performance.
12. Think of contractors as partners toward mission accomplishment, yet avoid conflicts of interest.